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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/670,428

09/24/2003

Michael R. Abidin

03272-PA

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7590  
Leonard Bloom, Esquire  
44 Caveswood Lane  
Owings Mills, MD 21117

10/30/2007

EXAMINER

YABUT, DIANE D

ART UNIT

PAPER NUMBER

3734

MAIL DATE

DELIVERY MODE

10/30/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/670,428

Applicant(s)

ABIDIN ET AL.

Examiner

Diane Yabut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

This action is in response to applicant's amendment received 20 July 2007.

The examiner acknowledges the amendments made to the claims.

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 5-8, 10, and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by **Jolly '309** (U.S. Patent No. **5,827,309**).

Claims 1, 10, and 15: Jolly '309 discloses a guarded surgical scalpel with a blade **50** being mounted on a cleat **49** on the scalpel, wherein a guard **40** is moved rearwardly on the scalpel to expose the blade, and a blade stripper **47** is moved forwardly to engage the rear portion of the blade and deflect the rear portion of the blade **59** away from the cleat on the scalpel, and the guard is then moved forwardly on the scalpel to strip the blade off the cleat and thus remove the blade from the scalpel, an improvement comprising a manually-releasable lock **35** on the blade stripper to prevent an accidental or inadvertent stripping of the blade off the scalpel, thereby requiring a two-hand operation and preventing an accidental or inadvertent stripping of the lade during a surgical procedure, and wherein the blade stripper is movable independently of the guard (Figures 1-2 and 14-15; col. 6, lines 36-48).

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Claims 2 and 16-17: Jolly '309 discloses a depressible top button **35** and a method of using a blade stripper wherein the lock comprises a locking stud or lock off **46**, or "projection," carried by the depressible top button and formed on a leaf spring portion, and a hook **91**' on the blade stripper receiving the locking stud, with "hook" being interpreted as "anything that catches," and moving the first element on the scalpel away from the second element on the blade stripper, thereby clearing the second element on the blade stripper from the first element on the scalpel, advancing the blade stripper forwardly of the scalpel to engage the rearward portion of the blade and position the rearward portion of the blade for subsequent engagement by the guard, and advancing the guard forwardly of the scalpel to engage the positioned rearward portion of the blade and eject it from the scalpel (Figures 14-16; col. 6, lines 36-48).

Claim 5: Jolly '309 discloses the depressible top button **35** (on the blade stripper **30**) also carrying a transverse detent pin **36**, wherein the guard **40** has a closed slot **26** within which the detent pin slides, and wherein the closed slot has a pair of detent pockets **26'**, one at each end thereof for receiving the detent pin, thereby providing a two-position manually-releasable detented position of the guard, and thereby precluding complete removal of the guard off the scalpel (Figure 2).

Claim 6: Jolly '309 discloses the respective detent pin **36** and locking stud **46** on the depressible top button being disposed oppositely of each other, in that the detent pin is disposed transverse to the longitudinal axis in which the locking stud is disposed (Figures 2 and 14-15).

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Claims 7-8 and 14: Jolly '309 discloses the blade stripper **47** having a forward edge which is beveled and includes an incline, and wherein the beveled forward edge slides under the rear portion of the blade **59** and cams the blade away from the cleat on the scalpel to eject the blade as the rear portion of the blade rides up the incline on the compound beveled forward edge of the blade stripper (Figures 1-2 and 14-15).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3, 4, 9, and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jolly '309 (U.S. Patent No. **5,827,309**), as applied to Claims 2 and 10 above, and further in view of Jolly '289 (U.S. Patent No. **5,741,289**).

Claims 3 and 11: Jolly '309 discloses claimed device including the guard and the blade stripper moving longitudinally of the scalpel, respectively, and the blade stripper lock comprising a button **46a** on the handle of the scalpel, and wherein the blade stripper is movable independently of the guard (see paragraph 4 above), except for the locking stud being disposed transversely to the respective longitudinal movement of the guard and blade stripper.

Jolly '289 teaches a locking stud **41** being disposed transversely to the respective longitudinal movement of the guard and blade stripper (Figure 1; col. 5, lines 1-24). It would have been obvious to one of ordinary skill in the art at the time of invention to provide a transversely disposed locking stud, as taught by Jolly '289, to Jolly '309 since it was known in the art that detent pins transverse to the longitudinal axis of scalpels are commonly used in securely locking sliding elements into a desired position.

Claims 4 and 12-13: Jolly '309 discloses claimed device except for a depressible top button being part of a leaf spring that is pivotably disposed within the scalpel. However, Jolly '309 discloses a depressible *bottom* button **46a** being part of a leaf spring **46** that it is pivotably disposed within the scalpel (Figures 14-15; col. 6, lines 36-48). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the button **46a** by providing a depressible top button, as is the case with the button **35** of Jolly '309, in order for the user to easily depress and manipulate the button with the thumb when the scalpel is gripped, as well as being more visible to the user to ensure that it is not unintentionally actuated.

Claim 9: Jolly '309 discloses the claimed device including a blade being mounted on cleat on the main body portion of the scalpel, the blade stripper being movable independently of the guard, wherein a guard is moved rearwardly on the main body portion of the scalpel to expose the blade, wherein a blade stripper is moved forwardly to engage the rear portion of the blade and deflect the rear portion of the blade away from the cleat on the scalpel, and wherein the guard is then moved forwardly on the

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scalpel to strip the blade off the cleat and thus remove the blade from the scalpel, the guard and blade stripper moving longitudinally of the scalpel, the improvement comprising a manually-releasable blade stripper lock to prevent an accidental or inadvertent stripping of the blade off the scalpel, a hook on the blade stripper receiving the locking stud, wherein the depressible top button also carries a transverse detent pin, wherein the guard has a closed slot within which the detent pin slides, and wherein the closed slot has a pair of detent pockets, one at each end thereof for receiving the detent pin, thereby providing a two-position manually-releasable detented position of the guard, and thereby precluding complete removal of the guard off the scalpel, wherein the respective detent pin and locking stud on the depressible top button are disposed oppositely of each other, and wherein the blade stripper has a forward edge which is beveled and includes an incline, and wherein the beveled forward edge slides under the rear portion of the blade and cams the blade away from the cleat on the scalpel to position the blade for ejection as the rear portion of the blade rides up the incline on the beveled forward edge of the blade stripper, and thereafter the guard is moved forward to eject the blade (see paragraph 4 above), except for the blade stripper lock including a depressible top button, the depressible top button being formed on a leaf spring that is pivotably disposed within the main body portion of the scalpel (see explanation for Claim 4 above), the depressible top button carrying a locking stud disposed transversely of the longitudinal sliding movement of the guard.

Jolly '289 teaches a depressible top button **35** carrying a locking stud **41** disposed transversely of the longitudinal sliding movement of the guard. (Figure 1; col.

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5, lines 1-24). It would have been obvious to one of ordinary skill in the art at the time of invention to provide a transversely disposed locking stud, as taught by Jolly '289, to Jolly '309 since it was known in the art that detent pins transverse to the longitudinal axis of scalpels are commonly used in securely locking sliding elements into a desired position.

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1-17 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Diane Yabut whose telephone number is (571) 272-6831. The examiner can normally be reached on M-F: 9AM-4PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DY



MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER